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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,630	02/06/2004	Eric Herbst	FOOT10000100	8347

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EXAMINER	
PHILLIPS, CHARLES E	
ART UNIT	**PAPER NUMBER**
3751	

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/773,630	HERBST, ERIC	
	Examiner	Art Unit	
	Charles E. Phillips	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-30 is/are pending in the application.

4a) Of the above claim(s) 24-30 is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1,2,6,8,11,12,16-20 and 23 is/are rejected.

7)☒ Claim(s) 3-5,7,9,10,13-15,21 and 22 is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 2/6/04 & 2/18/05.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 6, 8, 11, 12, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coret in view of Won and Lawrence.

Coret teaches a foot operated flushing device employing a chain 7 housed in tub 8, extending from a pedal to a flush mechanism 5 mounted on the tank. Lacking is the specific nature of the pedal and its connection to the flush valve. Won teaches a foot pedal employing rollers 100, 100b (see figs 3-4) as well as Boden cable 103, to lift a seat. Lawrence teaches a tank clamp mechanism 14A to hold a Boden cable 50, 55 for flushing a toilet. It would have been obvious to employ the pedal and connections of Won and the clamp arrangement of Lawrence in lieu of these elements of Coret. Motivation is found as all are employed in foot-operated devices in a flush closet environment.

The claim 2 positioning is taught by Won. Claims 6, 16 and 8 find full response in Coret. Claims 11-12 find full response in the clamp of Lawrence. Re: claim 17, to employ a conventional flapper valve would have constituted an expedient of the modern day toilet art.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19, 20 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Won.

The operation of Won as set forth supra provides full response here.

Claims 3-5, 7, 9, 10, 13-15, 21 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-23, drawn to a foot actuator flusher, classified in class 4, subclass 249.

II. Claims 24-30, drawn to a method of operation of a foot flushing device, classified in class 4, subclass 661.

The inventions are distinct, each from the other because:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus could be used absent the claim 24 lines 18-22 methodology.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Ms. Reynolds on 4/5/05 a provisional election was made without traverse to prosecute the invention of I, claims 1-23. Applicant in replying to this Office action must make affirmation of this election. Claims 24-30 stand withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Any inquiry concerning this communication should be directed to Charles Phillips at telephone number (571) 272-4893.

Phillips/PJ

04/07/05

Charles E. Phillips
Primary Examiner